

#### Region 4 Brownfields Program



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# **Are There Brownfields In Your Community?**









#### **Purpose**

- Provide an overview of the new Brownfields Law
- Provide a general overview of types of grants funded by the Brownfields program
- Breakout session, review the proposal application process and requirements





# The Neids Brown lation Legislation



# SMALL BUSINESS LIABILITY RELIEF AND BROWNFIELDS REVITALIZATION ACT



#### H.R. 2869

## Title I – Small Business Liability Protection Act

Title II – Brownfields Revitalization & Environmental Restoration Act



# Title I Small Business Liability Protection

- Key Provisions
  - De Micromis Exemption
  - Municipal Solid Waste Exemption
  - De Minimis Expedited Settlements based on "ability to pay"



# DE MICROMIS EXEMPTIONS CERCLA 107(o)

At NPL Sites, if

< 110 gal. Liquid

< 200 lbs. Solid

Disposed, Treated, Transported prior to April 1, 2001



#### **Exceptions to the rule:**

- Materials contribute disproportionately to cost of cleanup
- Failure to cooperate
- Criminal conviction



#### What Is MSW?

- Household waste
- Commercial, Industrial or Institutional Waste
  - Essentially the same as household waste
  - Collected and disposed with other MSW as part of normal Municipal Collection Service
  - Hazardous substances that are no greater in relative quantity than found in typical household waste

# Title II: Brownfields Revitalization & Environmental Restoration Act

 Brownfields Revitalization Funding

B. Liability Clarifications

C. State Response Programs



## Title II Subtitle B: Liability Clarifications

Generally applies to owners & purchasers of property who -

- Did not contribute to the contamination or impede cleanup,
- Exercised appropriate care,
- Cooperate and provide access, and
- Conduct appropriate inquiry prior to purchase.



# Title II Subtitle B: Liability Clarifications Under CERCLA\*

- Provides Superfund Liability Relief to:
  - Innocent Landowners CERCLA 101
  - Contiguous Properties CERCLA 107 (q)
  - Prospective Purchasers CERCLA 107 (r)
- \*Does not change liability under other federal or state programs.



#### **Innocent Landowner**

- Protects landowner who purchases property without knowledge of contamination.
- All disposal must take place prior to purchase.
- Must perform AAI prior to purchase



#### **Contiguous Properties**

- "Protects landowner that is victim of his neighbors actions" where contamination has migrated from an adjoining or nearby parcel.
- Must not cause, contribute or consent to release.
- Perform AAI prior to purchase



#### Bona Fide Prospective Purchasers

- Provides liability protection for landowner that purchases property after January 11, 2002.
- All disposal must take place prior to purchase.
- OK to purchase with knowledge of contamination.
- Must perform AAI prior to purchase



#### Bona Fide Prospective Purchasers

- BFPP Remains Liable For Windfall Liens for unrecovered response costs.
  - Amount = increase in FMV attributable to response action at time of sale.
  - EPA may enter into windfall lien settlements.
  - Interim Policy for Windfall Liens July 16, 2003



#### Windfall Lien Policy

Website for Policy:

http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien.pdf

Region 4 contact: Kathleen West 404-562-9574



# What is "All Appropriate Inquiries?"

• "All Appropriate Inquiries," or due diligence, is the process of evaluating a property for potential environmental contamination and assessing potential liability for any contamination present at the property.

#### Interim Standard for AAI

- Congress mandated that EPA promulgate regulations establishing federal standards for all appropriate inquiries
- An interim standard is in effect until EPA issues a final rule.
- Interim standard was clarified in final rule published May 9, 2003 (68 FR 24888)
- Interim standard is ASTM E1527-00 (or E1527-97)



#### Schedule for Final Rule

- Negotiated Rulemaking Committee reached consensus on recommended regulatory language - November 14, 2003.
- Publication of proposed rule June 2004 (tentative)
- 60-day comment period
- Final rule after considering/responding to comments

#### **Additional Information**

 Information on Negotiated Rulemaking, including consensus-based language can be found on our website:

www.epa.gov/brownfields/regneg.htm

 For additional information, contact Patricia Overmeyer at overmeyer.patricia@epa.gov



# Title II Subtitle C: State Response Programs

- Authorizes \$50 M /year (for 5 years) to assist States
   & Tribes
- FUNDING: EPA may award a grant to a State or Tribe that:
  - Has, or is taking reasonable steps to establish, a qualified response program

- or -

• Already has an MOA with EPA for VRP (FL)

#### State/Tribal Response Programs

<u>ALSO</u>

#### TO QUALIFY FOR FUNDING

All States/Tribes must maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year.



#### Title II: Subtitle C

- Purpose of Program:
  - Expand Activities
  - Build State & Tribal Capacity
  - Funds for Capitalizing RLF and Insurance Mechanisms
  - Increase number of Response Actions
     Overseen by States/Tribes
  - Replaces VCP & TBA Funding

# Title II Subtitle C: State Response Programs

- Amended CERCLA to add Section 128(a)
- Eligible Response Site
- NPL Deferral
- Allows citizens to request an assessment



# Title II Subtitle A: Brownfields Revitalization Funding

#### **Brownfields Mission**

To "empower" states, communities, and diverse stakeholders to initiate cleanup and redevelopment of brownfields



### **BROWNFIELDS DEFINITION**

"Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

## Additions to Definition of Brownfields Sites

- Land contaminated by petroleum or petroleum products
- Land contaminated by a controlled substance as defined in the Controlled Substance Act
- Mine-scarred land

## **Exclusions to Definition of Brownfields Sites**

- NPL Sites listed or proposed
- Planned or ongoing CERCLA removal action
- Subject to an EPA/State Order
- Subject to RCRA corrective action ("add backs" permitted)
- Federal Facilities
- Sites with PCB Contamination subject to remediation under TSCA.
- Received LUST Funds



#### Title II Subtitle A: Brownfields

- General Changes to the Brownfields Program
- Expands Brownfields Program by authorizing funding up to \$200 M / yr including \$50 M / yr for sites with Petroleum Contamination
- Expands applicant eligibility for grants
- New provision for direct cleanup grants of up to \$200,000 / site



## Title II Subtitle A: Brownfields

- General Changes to the Brownfields Program
- Brownfields Cleanup grants available to nonprofits
- Streamlines requirements for the Brownfields Cleanup Revolving Loan Fund
- Makes funds available for technical assistance, training and research



# What Grant Funds are Available?

- Funding for assessment and cleanup of sites awarded through an annual, national competition
  - Assessment grants community wide or site specific
  - Capitalization grant to establish a revolving loan and subgrant fund (RLF)
  - Site specific Cleanup grants
  - Job Training for Assessment & Cleanup skills

#### **Assessment Grants**

- Inventory
- Characterize
  - Assess
- Conduct Planning
- Community Involvement



#### **Assessment Grants Funding**

- \$200K (Hazardous substances)
  - \$200K (Petroleum only)
- Up to \$350K per property w/approved waiver
  - No Cost Share
  - Performance Period is 2 yrs



#### **Revolving Loan Fund Grants**

Capitalize a revolving Loan

Provide Subgrants

Performance Period is 5yrs

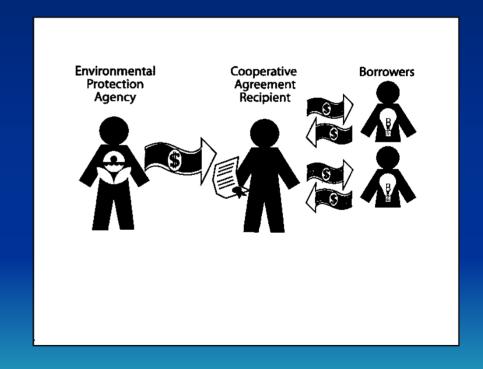


# Revolving Loan Fund Grants Funding

- Up to \$1M per eligible entity
- 40%-cleanup subgrants
- 60%loans
- Coalitions may apply

Cost share of 20%

EPA-Grant Recipient-Loan Recipient



#### Cleanup Grants

Cleanup Activities

Applicant must own the property

Minimum of a Phase I

Performance Period is 2yrs



#### Cleanup Grants Funding

- \$200K (Haz. Sub/Petroleum)
  - Five sites maximum

Cost share of 20%



#### Job Training (JT) Grant

 Prepares trainees for future employment in the environmental field

 Provides training to residents in communities impacted by brownfields

Empowers local community residents.



## THIS CONCLUDES THE OVERVIEW OF OUR PROGRAM

